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Changes to the Tax Abatements and Alabama Income Tax Capital Credit by Act 2009-722 Effective May 22, 2009

Governor Bob Riley signed Act 2009- 722 into law on May 22, 2009. The act expands existing incentives offered to new or expanding businesses under the Tax Incentive Reform Act of 1992 (Chapter 9B, Title 40, Code of Alabama 1975) and the Income Tax Capital Credit law (Section 40-18-190 et seq., Code of Alabama 1975) in addition to making revisions in other areas.

TAX ABATEMENTS

In addition to converting to the 2007 North America Classification System (NAICS) from the Standard Industrial Classification (SIC) Code system, the act expands the qualifying business activities. Currently, the business activities that qualify for tax abatements are as follows:

- Any trade or business in the 2007 North American Industrial Classification System (NAICS), promulgated by the Executive Office of the President of the United States, Office of Management and Budget as:
 - Sectors 31 (except National Industry 311811), 32, and 33 (manufacturing),
 - Subsector 423 and 424 (merchant wholesalers, goods),
 - 511 (publishing industries (except internet)),
 - 927 (space research and technology), ([NEW](#))
 - Industry Group 5417 (scientific research and development services),
 - 5415 (computer systems design and related services),
 - 5182 (data processing, hosting, and related services),
 - Industry 11331 (logging),
 - 48691 (pipeline transportation of refined petroleum products),
 - National Industry 115111 (cotton ginning),
 - 517110 (wired telecommunications carriers), ([NEW](#))
 - 541380 (testing laboratories),
 - 561422 (in bound call centers only), ([NEW](#)) or
- Any process or treatment facility which recycles, reclaims, or converts materials, which include solids, liquids, or gases, to a reusable product ([NEW](#));
- Headquarters facilities as defined in NAICS 551114 (where at least 50 new jobs are created); ([NEW](#))
- Data processing centers (where at least 50 new jobs are created); ([NEW](#))
- Renewable energy facilities; ([NEW](#))
- Research & development facilities; ([NEW](#))
- Projects owned by utilities that produce electricity from alternative energy resources;
- Projects owned by utilities that produce electricity from hydropower production;
- Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling), when such trade or business is conducted on premises in which the Alabama State Port Authority has an ownership and are used as part of the operations of the Alabama State Port Authority; or
- Any underground natural gas storage facility which is located in the Gulf Opportunity Zone, developed from existing geologic reservoirs

CAPITAL CREDITS

Several additions and changes were made to the existing capital credit law. Act 2009-722 standardized the NAICS code to the 2007 NAICS code, expanded the qualifying business activities, and redefined headquarters facility projects under the capital credit law. Act 2009-722 also included several substantial changes to the capital credit law for projects that file their Form INT after May 22, 2009, including extending the capital credit to certain qualifying projects (data processing centers, headquarters facilities, and in-bound call centers) which are liable for financial institution excise tax rather than income tax. The changes to the statutory requirements are as follows:

BUSINESS ACTIVITY REQUIREMENT. Currently, the business activities that qualify for capital credits are as follows:

- Any trade or business in the 2007 North American Industrial Classification System (NAICS), promulgated by the Executive Office of the President of the United States, Office of Management and Budget as:
 - Sectors 31 (except National Industry 311811), 32, and 33 (manufacturing),
 - Subsector 423 and 424 (merchant wholesalers, goods),
 - 511 (publishing industries (except internet)),
 - 927 (space research and technology), (NEW)
 - Industry Group 5417 (scientific research and development services),
 - 5415 (computer systems design and related services),
 - 5182 (data processing, hosting, and related services),
 - Industry 11331 (logging),
 - 48691 (pipeline transportation of refined petroleum products),
 - National Industry 115111 (cotton ginning),
 - 517110 (wired telecommunications carriers), (NEW)
 - 541380 (testing laboratories),
 - 561422 (in bound call centers only), (NEW) or
- Any process or treatment facility which recycles, reclaims, or converts materials, which include solids, liquids, or gases, to a reusable product;
- Headquarters facilities as defined in NAICS 551114 (where at least 50 new jobs are created); (redefined)
- Data processing centers (where at least 50 new jobs are created); (NEW)
- Renewable energy facilities; (NEW)
- Research & development facilities; (NEW)
- Projects owned by utilities that produce electricity from alternative energy resources; or
- Projects owned by utilities that produce electricity from hydropower production

NEW EMPLOYEE REQUIREMENT. Act 2009-722 requires data processing center projects to create a minimum of 50 jobs for new employees and increased the minimum job creation for headquarters facilities from 20 jobs to 50 jobs for new employees. Additionally, in instances where an investing company's employment levels at an existing facility were reduced within a two year period of a qualifying project being placed in service, only the number of employees in excess of the number of employees who worked at the existing facility prior to the reduction in employment shall be deemed new employees for capital credit purposes.

BASE WAGE REQUIREMENT. Act 2009-722 increases the base wage requirements for all projects that file Form INT after May 22, 2009 as follows.

- For projects located in favored geographic areas, the average wage of all new employees at the project must meet the lesser of:
 - \$12 per hour, excluding benefits, indexed annually as provided in Section 25-5-68, Code of Alabama 1975, or,
 - Average hourly wage of the county where qualifying project is located
- For all other projects, the average wage of all new employees at the project must meet the lesser of:
 - \$15 per hour, excluding benefits, indexed annually as provided in Section 25-5-68, or,
 - Average hourly wage of the county where qualifying project is located

Projects whose Form INT was filed on or before May 22, 2009 are grandfathered under the former base wage requirements.

NONCOMPLIANCE PROVISION. For projects whose Form INT is filed after May 22, 2009, Act 2009-722 imposes penalties for projects that fail to meet the continuing employment or wage requirements:

- Qualifying project failing to meet minimum requirements in any year after the first year shall forfeit a percentage of the capital credits claimed in the prior five years as follows:
 - 100% of the capital credit claimed in the year immediately preceding the year in which the investing company fails to maintain the employment and wage requirements (noncompliance year);
 - 20% of the credits claimed in the 2nd, 3rd, 4th, and 5th years preceding the noncompliance year.